

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Establishment of a Public Purpose Program
Surcharge Pursuant to Assembly Bill 1002.

Rulemaking 02-10-001

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING
ELIGIBILITY FOR COMPENSATION AWARD**

Pursuant to Pub. Util. Code §§ 1801-1812, the Latino Issues Forum (LIF) and the National Resources Defense Council (NRDC) filed separately Notices of Intent (NOI) to claim compensation for their participation in this proceeding. This ruling finds that LIF and NRDC are eligible to file claims for compensation.

Timelines

Pub. Util. Code § 1804 (a)(1) states in relevant part that “A customer who intends to seek an award . . . shall, within 30 days after the prehearing conference is held, file and serve . . . a notice of intent to claim compensation.”

A prehearing conference in this proceeding was held on February 5, 2003. LIF filed an NOI on February 14, 2003, and NRDC filed an NOI on March 4, 2003. Hence, the NOIs were timely filed.

Qualification as a Customer

Administrative Law Judge (ALJ) rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and in which of the three statutory categories the

customer falls into. (Decision (D.) 98-04-059, *mimeo.*, p. 31.) Section 1802(b) provides in relevant part:

“Customer means any participant representing consumers, customer, or subscribers on any electrical, gas telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interest of residential ratepayers . . .”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization’s articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that is residential ratepayers.

The by-laws of LIF authorize them to represent the interests of residential ratepayers before state and federal regulatory agencies and in court.¹ LIF estimates that its members represent a constituency that is divided 85-15% between residential and small business customers, respectively. Accordingly, LIF qualifies as a Category 3 customer.

The by-laws of NRDC² authorize them to represent the interests of its members in regulatory and judicial proceedings within the scope of the activities of the Corporation. NRDC estimates that at least 60,000 of its 100,000 members are residential ratepayers of California gas utilities. Accordingly, NRDC qualifies as a Category 3 customer.

Planned Participation

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The ALJ may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

¹ LIF has filed copies of their organization's bylaws in numerous other notices of intent, including one filed on March 4, 1999 in A.98-12-005. *See also*, the Administrative law Judge's Ruling Addressing Eligibility for Compensation Awards in A.99-07-002 *et al.* dated October 12, 1999.

² NRDC NOI, Attachment 1.

In their NOI, LIF states that its active participation will be “...examining the effect of proposed public purpose collection and administration mechanisms on the vulnerable customers and constituencies whom they represent, with the objective of ensuring that the integral purpose of CARE and low-income weatherization programs to provide affordable energy be preserved while promoting efficient utility administration and adequate funding.” (NOI, p. 2.)

In their NOI, NRDC states that its active participation will focus on “...the appropriate level of funding, administration and implementation issues regarding cost-effective energy efficiency and public interest RD&D.”³

Estimated Compensation Request

Section 1804(a)(2)(A) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. LIF estimates a total projected budget of \$51,450 for its participation based on proposed hourly rates, and expenses, that will be addressed in its Request for Compensation. NRDC estimates a total projected budget of \$18,000 for its participation based on proposed hourly rates and expenses that will be addressed in its Request for Compensation.

LIF in its NOI provides an estimate of compensation, noting that “the estimates presented here should be taken as very rough and subject to change depending upon the schedule and scope of subsequent events.” Similarly, NRDC in its NOI provides that any future claim to compensation is dependent upon the full scope and final decision in this proceeding. The presentation of the

³ Research, Development and Demonstration.

estimates below should not be construed as ruling on their reasonableness of scope, hourly compensation rates, or recoverability of the various costs.

LIF Itemized Estimate

Attorney Fee

Susan Brown	(75 hours @ \$325/hours)	\$24,375.00
Enrique Gallardo	(50 hours @ \$255/hours)	12,750.00
Mirissa McMurray	(60 hours @ \$125/hours)	7,500.00

Expert Fees

Luis Arteaga	(25 hours @ \$250/hours)	6,250.00
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Incidental Costs

Postage, photocopies, deliveries, supplies, and telephone		<u>500.00</u>
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Total: \$51,450.00

NRDC Itemized Estimate

Expert Fees

Sheryl Carter	(50 hours @ \$150/hour)	\$7,500.00
Devra Bachrach	(100 hours @ \$100/hour)	10,000.00
Expenses	(postage, copies, travel, etc.)	<u>500.00</u>

Total: \$18,000.00

Significant Financial Hardship

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included

with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding. This rulemaking commenced with its filing on October 3, 2002. Accordingly, any finding that a customer would experience significant hardship, which was made within one year of October 3, 2002, creates a rebuttable presumption of that customer's eligibility in this proceeding.

LIF has elected not to include a showing at this time, so they must show significant financial hardship if and when it files a request for compensation.

NRDC received a finding of significant financial hardship in a ruling dated May 28, 2002 issued in R.01-10-024. This proceeding commenced within one-year of the date of this finding, therefore, the rebuttal presumption applies in this case.

Today's ruling goes only to the eligibility of LIF and NRDC to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Pub. Util. Code Article 5.

IT IS RULED that:

1. Latino Issues Forum (LIF) and Natural Resources Defense Council (NRDC) timely filed separately Notices of Intent for compensation in this proceeding.
2. LIF and NRDC are Category 3 customers.
3. LIF and the NRDC have fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).

4. LIF shall make a showing of significant financial hardship in any request for compensation in this proceeding.

5. NRDC has made a showing of significant financial hardship by reference to a previous determination.

6. LIF is eligible for an award of compensation for a substantial contribution in this proceeding.

7. NRDC is eligible for an award of compensation for a substantial contribution in this proceeding.

Dated April 30, 2003, at San Francisco, California.

/s/ Bruce DeBerry

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated April 30, 2003, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.